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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,883	07/11/2003	Chih-Wei Chen	LA-7196-118XX	6811
167	7590	06/19/2006	EXAMINER	
FULBRIGHT AND JAWORSKI LLP 555 S. FLOWER STREET, 41ST FLOOR LOS ANGELES, CA 90071			CHAVIS, JOHN Q	
			ART UNIT	PAPER NUMBER
				2193

DATE MAILED: 06/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/618,883	CHEN, CHIH-WEI	
	<b>Examiner</b>	<b>Art Unit</b>	
	John Chavis	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 11 July 2003.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 5-7 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Gehani et al. (5,765,171).

What is claimed is:

Gehani

1. A network-based server code auto upgrade method for use on a network system linked to a cluster of servers of the same type for upgrading the current version of server code in each of the servers to a new version of server code;

See the title, abstract, and col. 2 lines 19-25.

the network-based server code auto upgrade method comprising: linking via the network system to each of the servers;

See col. 2 lines 33-40.

inspecting the current version of server code installed in each of the servers via the network system;

See col. 2 lines 55-63.

comparing the current version of server code installed in each of the servers against the version of the new server code;

See col. 3 lines 35-37.

in the event that the current version of server code installed in any one of the servers is older than the version of the new server code, performing a remote

See col. 3 lines 38-42.

upgrade procedure on that server via the network system to replace the current version of server code in that server with the new version of server code.

2. The network-based server code auto upgrade method of claim 1, wherein the network system is selected from the group comprising: intranet, extranet, and Internet.

See col. 4 lines 7-13.

5. The network-based server code auto upgrade method of claim 1, wherein the remote upgrade procedure is carried out at a user-specified time.

See the "scheduled replication session" (user specified time) in col. 2 lines 19-25.

Claims 6-7 are rejected as claims 1-2.

In reference to claim 10, see the rejection of claim 5.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-4 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gehani in view of the applicant's selective use of descriptive information to describe the server and the type of software being updated.

3. The network-based server code

The applicant merely mention these

auto upgrade method of claim 1, wherein the servers are selected from the group of types comprising: file servers, data storage servers, email servers, and proxy servers.

items here. It is not clear where this feature is referenced or taught in the specifications. Furthermore, Gehani's servers generic to Maintaining consistency of data items, which would read on any of the servers mentioned above. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to enable replicas to maintain consistency of any type of database; since, all types are subject to updates.

4. The network-based server code auto upgrade method of claim 1, wherein the new version of server code is selected from the group comprising: BIOS, firmware control code, server management programs, embedded operating system, and application programs.

This feature is also merely mentioned here and not clearly defined in the specifications. Therefore, it is considered the applicant is relying on information known in the art at the time of the invention. Furthermore, it is considered the new version is Selected from the items that have been changed and therefore, any data in Gehani's system is considered subject to change and therefore subject to update.

As per claims 8-9, see the rejection of claims 3-4.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Chavis whose telephone number is (571) 272-3720. The examiner can normally be reached on M-F, 7:30am-4:00pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki can be reached on (571) 272-3719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JC



John Chavis  
Primary Examiner AU-2193